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Let me say that again. A huge swath of America, including many expert legal minds, does not agree with the arguments put forth by the administration. These arguments are transparently contrived, intellectually deficient, indefensible excuses being served up like tripe to silence legitimate criticism of the White House, a White House so infused with its own hubris that it has talked itself into believing that its inhabitants are above the law. But they are not. They are not above the law. President Bush is not above the law. No President is above the law. No United States Senator is above the law. No man is above the law. No one in the United States of America is above the law. Remember, this is a nation of laws, not of men.

Yesterday, the Senate's Select Committee on Intelligence jettisoned its constitutional responsibility to make certain that our laws are not being breached, and that the spirit and text of our revered Constitution remain in force. It is a sad day, indeed, to see such an important committee wilt under political pressure applied by the Vice President in partisan meetings held behind closed doors. The committee adjourned last night without considering a Democratic proposal to begin an investigation of the warrantless spying program, even though Senator JAY ROCKEFELLER, the vice-chairman of the Intelligence Committee, had been assured that his proposal would receive a vote.

I want to commend my colleague, Senator ROCKEFELLER. He has worked hard to protect the people's liberties, to make sure that this administration, even in its most secret circles, follows the law and the Constitution. It has not been an easy task, but it is one that Senator ROCKEFELLER has carried diligently.

Like Senator ROCKEFELLER, I will not sit idly by and allow the President's possible breaking of the law to be swept under the rug. I refuse to go quietly into the night, abdicating my responsibility as a U.S. Senator to a secretive executive branch, which refuses to brief the Congress of the United States on its clandestine spying on U.S. citizens without a warrant—an administration that believes it can, on its own, nullify constitutional provisions intended to protect the freedoms of millions of Americans for over 200 years.

This travesty must not stand. The peeping and snooping and spying must be investigated.

I am today announcing my intention to submit to the Congress legislation that will establish a nonpartisan, independent, 9-11-style commission to investigate and determine the legality of the President's actions.

There is a critical need for a thorough investigation of all domestic surveillance programs.

As I stated on Wednesday in my remarks on this subject, we, the American people—not just the NSA or the White House—have a legitimate need to know what is being done, by whom, and to whom. If there is a justifiable and valid reason to surveil a potential terrorist in the U.S., we certainly can find a way to do it legally. If there is a need to provide more efficient tools to fight terror, Congress has the responsibility to deliberate and, if warranted, to approve them. The President should ask Congress for them; not seize new powers that have never been enumerated by any U.S. court.

Congress would be pleased to entertain his request, as we have in the past, by updating FISA and the PATRIOT Act, but not—I repeat, not—before a full investigation to determine if laws have been broken—an investigation which will give members a fuller understanding of just what these surveillance programs entail. A little sunshine on this process is long overdue. Congress cannot fix what the White House does not want us to fully understand.

Congress needs to know if the Foreign Intelligence Surveillance Act or any other U.S. law has been broken, and whether the constitutional rights of thousands of Americans have been violated without cause. It is essential that Congress obtain the answers to these questions, not for partisan political reasons, but because our system of checks and balances requires it.

James Madison advised in *Federalist* 47 that: the accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

The assumption of power by an unchecked executive, who arrogantly believes that he can seize the authority to spy on innocent Americans and wantonly violate the fourth amendment is the beginning of the tyranny Madison so feared.

Mr. President, I ask unanimous consent that the text of the fourth amendment of the Constitution be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONSTITUTION: FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Mr. BYRD. Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

LIHEAP

Mr. STEVENS. Mr. President, our country needs additional funding for LIHEAP. Temperatures in rural Alaska have reached 62 below zero. These temperatures have frozen heating systems and water and sewer lines in many of our villages. Alaskans are struggling this winter and paying over \$5 per gallon to heat their homes. In fact, the mayor of a North Slope community told me that at one point, a village paid \$8 per gallon.

While the home heating picture is not as bleak in other parts of our country, all Americans are feeling the effects of high energy prices.

In December, I tried to address this situation by including emergency LIHEAP funding in the Defense Appropriations Bill. Our bill created a new revenue stream by authorizing oil and gas development in the Coastal Plain of ANWR—and used this revenue to provide funding for several emergencies. Our bill included \$2 billion for LIHEAP and funding for the hurricane victims, first responders, and farmers.

The ANWR provision would have created a long-term, dedicated funding stream for home energy assistance.

Most of my colleagues on the other side of the aisle successfully filibustered consideration of this package under the guise of a Rule XXVIII violation. They then noted to remove the ANWR provision and the funds it provided from the bill, including emergency funding for LIHEAP.

It was a sad display of good policy dying a quick death at the hands of partisan politics. It was a particularly sad day for the people this funding was designed to help.

Despite this, Americans still need heating assistance this winter. I hoped the Senate would put partisan politics aside and create a long-term funding stream for LIHEAP in December. I believe that would have been the best solution.

The measure before us today is the only other solution available, and I urge my colleagues to pass emergency LIHEAP assistance.

S. RES. 374 (PASSED THURSDAY, FEBRUARY 16)

Mr. FRIST. Mr. President, S. Res. 374 concerns a request for testimony, document production, and representation in a criminal case. The U.S. Department of Justice has brought a case in Federal court in the District of Columbia against the former chief of staff of the General Services Administration. The five-count indictment includes charges of making false statements and obstructing the investigation of the Committee on Indian Affairs into allegations of misconduct by lobbyists in the

course of the representation of Native American tribes.

Both the Government and the defense are seeking trial testimony and documents from committee staff who assisted in the conduct of the Committee's investigation. The chairman and vice chairman of the committee would like to assist by providing necessary evidence in this trial, consistent with any rulings of the Court. Accordingly, this resolution would authorize committee staff, where appropriate, to testify and to produce documents in this case with representation by the Senate Legal Counsel.

**S. RES. 375 (PASSED THURSDAY,
FEBRUARY 16)**

Mr. FRIST. Mr. President, S. Res. 375 concerns a request for testimony and representation in related criminal trespass actions in Concord District Court in the State of New Hampshire. In these actions, eight defendants have been charged with criminally trespassing on the premises of Senator JUDD GREGG's Concord, NH, office on December 5, 2005, for refusing repeated requests to leave Senator GREGG's office at the end of the business day in order to allow the office to close. Trials on the charge of trespass are scheduled to commence on or about March 1, 2006. The State has subpoenaed a member of the Senator's staff who witnessed the defendants' conduct. The enclosed resolution would authorize that staff member, and any other employees of Senator GREGG's office from whom evidence may be required, to testify in connection with these actions.

**S. RES. 376 (PASSED THURSDAY,
FEBRUARY 16)**

Mr. REID. Mr. President pursuant to Senate Resolution 213, 109th Congress, the Senate authorized the Senate legal counsel to represent Senators JOHN MCCAIN and JON KYL in a pro se civil action in which the plaintiff complained that the Senator defendants violated their duties under the common law and the Federal Criminal Code by failing to investigate or prosecute the alleged commission of 1.6 million crimes. After the Senate legal counsel moved to dismiss the action, the plaintiff sought to amend the complaint to name 29 additional defendants, including Senators BILL FRIST, JOSEPH I. LIEBERMAN, MITCH MCCONNELL, RICK SANTORUM, and TED STEVENS, as well as 14 judges and 10 executive branch officials.

In a January 13, 2006, Memorandum Opinion and Order, the district court accepted the amended complaint for filing and dismissed it. The court held that plaintiff's criminal claims failed on the merits and that plaintiff's civil claims were barred under the Federal Tort Claims Act for plaintiff's failure to exhaust his administrative remedies under the act. The court also prohib-

ited the plaintiff from filing in that court any further claim arising out of the subject matter of the case against any of the 31 defendants.

Plaintiff appealed the dismissal of his case. Accordingly, this resolution would authorize the Senate legal counsel to represent the five additionally named Senator defendants on appeal in defending the dismissal of the amended complaint against all of the Senator defendants.

LAURA DALE DUFFIELD

Mr. KYL. Mr. President, I rise today to announce to the Senate the arrival in this world of Laura Dale Duffield. Miss Duffield was born to her parents Cara and Steven this last Friday, and is reported to weigh over 7 pounds. Her father, Steven, is the Judiciary Policy Analyst and Counsel for the Republican Policy Committee, which I chair.

I would like to take a moment to note for posterity some of the events taking place in the world at the time that young Laura joins us. Most important among the matters recently before the Senate, I think, is the confirmation several weeks ago of the nomination of Samuel Alito to be a Justice of the Supreme Court of the United States. In the fall of last year, the Senate also confirmed the nomination of John Roberts to be the Chief Justice of the United States. Steven played an important role in both confirmations, supplying Republican Senators with information and draft speeches about the nominees, and even staffing me on the Judiciary Committee during the nominees' hearings. This is the first time that there has been a change in the membership of the Supreme Court since 1994—before Laura's parents even began law school. Chief Justice Roberts replaces Chief Justice Rehnquist, who originally had been appointed to the Court in 1971, in between the time that Laura's parents were born. Justice Alito replaces Justice O'Connor, who had been appointed to the Court when Laura's parents still were in grade school.

In the years to come, we of course will have many opportunities to evaluate these two new Justices and their impact on the law. At the present time, based on what I saw of these nominees at their hearings before the Judiciary Committee, I think that they give us reason to be hopeful about the future. I think that we can reasonably expect both nominees to usher in a new era of the rule of law in this country—to restore the Supreme Court to its intended role, of declaring what the Constitution means in light of how it was reasonably understood when it was enacted. For many years now, Americans often have felt powerless at the hands of a Court that has pursued its own political agenda—an agenda without a basis in the text, structure, or history of the Constitution. I am optimistic that in the years to come, the Supreme Court might play a less prominent role

in American life, and might allow the American people and their elected representatives a more prominent role in making the laws that govern them.

This year also marks the 5th year since the terrorist attacks on the Trade Center in New York and on the Pentagon. Those attacks still set much of the national agenda, from the wars in Afghanistan and Iraq to the legislation that we are considering in the Senate. On the day that Laura was born, last Friday, the headline in the Washington Post was, "Patriot Act Compromise Clears Way for Senate Vote." I will include this news story in the RECORD following my remarks. Last December, the PATRIOT Act—an important antiterrorism law that enhances investigators ability to detect and disrupt terrorist plots—was held up in a legislative filibuster. Occasionally, the Senate takes to heart its intended role as a brake on legislative action and throws one of its periodic tantrums. But fortunately, just in advance of Laura's arrival, the impasse over this indispensable law has been cleared.

Finally, this moment in time also is marked in this place by legislative action on a slew of reforms to our civil justice and bankruptcy laws; an attempt to reform our immigration system and control our border; and an attempt to reverse the verdict of the Civil War by authorizing Native Hawaiians to secede from their State. Mention of these projects, however, serves only to highlight their insignificance relative to the arrival of a new child in the world. I doubt that Steven even will remember the laborious policy papers that he produced on all of these topics as he watches Laura grow older.

I congratulate Steven and Cara on the arrival of their daughter—on the fact that there is now one more person in the world whom we will all call "Duffield"—and I wish them good fortune in caring for and cultivating their new charge.

I ask unanimous consent that the following Washington Post news story be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From washingtonpost.com, Feb. 10, 2006]
**PATRIOT ACT COMPROMISE CLEARS WAY FOR
SENATE VOTE**
(By Charles Babington)

Efforts to extend the USA Patriot Act cleared a major hurdle yesterday when the White House and key senators agreed to revisions that are virtually certain to secure Senate passage and likely to win House approval, congressional leaders said.

The law—passed in the wake of the 2001 terrorist attacks and scheduled to lapse in key areas last year—makes it easier for federal agents to secretly tap phones, obtain library and bank records, and search the homes of suspected terrorists. Several Democrats said the compromise announced yesterday lacks important civil liberties safeguards, and even the Republican negotiators said they had to yield to the administration on several points.